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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SERENA GATEB,

Plaintiff(s),

vs.

UNITED STATES,

Defendant(s).

2:14-cv-00171-JAD-VCF

**ORDER AND REPORT AND
RECOMMENDATION**

11 This matter involves Plaintiff Serena Gateb's application to proceed *in forma pauperis*. (#1).
12 Gateb is a *pro se* litigant currently in the custody of the Nevada Department of Corrections. For the
13 following reasons Gateb's application to proceed *in forma pauperis* is granted, and the court
14 recommends that the underlying matter be dismissed without prejudice.

15 **BACKGROUND**

16 This matter arises out of Plaintiff Serena Gateb's drug related convictions in the Nevada Eighth
17 Judicial District Court. The court presumes that Plaintiff Serena Gateb intends to bring a Section 1983
18 action against the State of Nevada, however, Gateb has not yet filed a complaint in this matter. (#1).
19 Gateb has included in her application a copy of the judgment and conviction entered against her in state
20 court on June 14, 2010. (#1-1) Because Gateb has not filed a complaint with her application to proceed
21 *in forma pauperis*, the court can only speculate that Gateb is intending to bring this civil rights action
22 against the state in order to appeal her state court conviction.

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DISCUSSION

The motion before the court presents three questions: (1) whether Gateb may proceed *in forma pauperis* under 28 U.S.C. § 1915(e); (2) whether Gateb has taken the necessary steps to commence an action; and (3) whether this court has jurisdiction over Gateb's action.

I. Gateb may Proceed in Forma Pauperis

Gateb's application to proceed *in forma pauperis* is granted. A plaintiff is permitted to bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit demonstrating that the plaintiff "is unable to pay such fees or give security therefore." 28 U.S.C. § 1915(a)(1). Gateb has submitted a financial affidavit (#1). According to the affidavit, Gateb's current gross monthly income is \$50.00. The court finds that Gateb is unable to pay the fees associated with this litigation, and her application to proceed *in forma pauperis* is, therefore, granted.

II. Gateb has not commenced this action

Because the court grants Gateb's application to proceed *in forma pauperis*, the court must next review Gateb's complaint to determine if the complaint is frivolous, malicious, or fails to state a claim for which relief can be granted. The court's review of Gateb's complaint, or lack thereof, is guided by two legal standards: Federal Rule of Civil Procedure 3 and 8.

A. Legal Standards

Federal Rule of Civil Procedure 3 provides that "a civil action is commenced by filing a complaint with the court." Federal Rule of Civil Procedure 8(a) states that a complaint "that states a claim for relief must contain ... a short plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a)(2).

Typically, the court would first be required to identify "the allegations in the complaint that are not entitled to the assumption of the truth." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Factual allegations that are "merely consistent with liability," *id.* at 678, or "amount to nothing more

1 than ‘formulaic recitation of the elements’ of a constitutional” claim, are not entitled to the assumption
2 of truth. *Id.* at 681.

3 Next, the court would normally determine if the complaint states a “plausible claim” for relief.
4 *Id.* at 679. A claim is considered “plausible” if the factual allegations “allow the court to draw a
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678.

6 Traditionally, if the conduct alleged in the complaint, which is accepted as true, does “not permit
7 the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not
8 “show[n]” – “that the pleader is entitled to relief.” *Id.* (citing Fed. R. Civ. P. 8(a)(2)). Courts are
9 however instructed to hold incarcerated *pro se* litigants to a less stringent standard. *See Hughes v. Rowe*,
10 449 U.S. 5, 10 n. 7 (1980).

11 However, because Gateb has not complied with Rule 3 by first filing a complaint, the court
12 cannot conduct its analysis as to the merits of the Plaintiff's action. The Plaintiff's section 1983 action
13 must therefore be dismissed as a matter of law. The Plaintiff should, however, be given leave to file her
14 complaint with court.

15 **III. This court does not have jurisdiction over state law criminal claims**

16 “Federal courts are courts of limited jurisdiction, and ‘the presumption is that (we are) without
17 jurisdiction unless the contrary affirmatively appears.’” *People of State of Cal. ex rel. Younger v.*
18 *Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979) (citing *Fifty Associates v. Prudential Insurance Co. of*
19 *America*, 446 F.2d 1187, 1190 (9th Cir. 1970)). Furthermore, federal courts enjoy no general appellate
20 oversight of state courts. *Easley v. Jones*, 2:08-CV-2476 JFM(PC), 2009 WL 2152084, at *3 (E.D. Cal.
21 July 10, 2009). Thus, district courts may exercise only original jurisdiction; they may not exercise
22 appellate jurisdiction over state court decisions. *Dubinka v. Judges of Superior Court of State of Cal. for*
23 *Cnty. of Los Angeles*, 23 F.3d 218, 221 (9th Cir. 1994), (citing *District of Columbia Court of Appeals v.*
24 *Feldman*, 460 U.S. 462, 482–86, 103 S.Ct. 1303, 1314–17, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity*
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1 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
2 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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4 DATED this 25th day of February, 2014.



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6 CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE
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